

**United States Department of Labor
Employees' Compensation Appeals Board**

D.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bedford Park, IL, Employer**

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**Docket No. 07-2405
Issued: March 5, 2008**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 24, 2007 appellant filed a timely appeal from a September 25, 2006 merit decision of the Office of Workers' Compensation Programs granting her a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decision.

ISSUES

The issues are: (1) whether appellant has more than a five percent permanent impairment of the left upper extremity; and (2) whether she has any permanent impairment of the right upper extremity.

FACTUAL HISTORY

On May 14, 2003 appellant, then a 42-year-old bulk mail clerk, filed an occupational disease claim alleging that she sustained bilateral carpal tunnel syndrome due to factors of her federal employment. The Office accepted her claim for bilateral carpal tunnel syndrome. Appellant stopped work on January 17, 2003 and returned to work on February 13, 2003. She

began working with restrictions on December 15, 2003. Appellant stopped work on February 4, 2004 and underwent a right carpal tunnel release on April 15, 2004 and a left carpal tunnel release on July 14, 2004. Appellant resumed work with restrictions on October 18, 2004.¹

In a report of the employing establishment dated April 29, 2005, Dr. Thomas A. Wiedrich, a Board-certified plastic surgeon, measured full range of motion of the upper extremities and 5/5 two-point discrimination for all fingers except the right thumb which had 6/5 discrimination. He found that appellant had a positive Phalen's test on the left, negative Tinel's sign and median nerve compression tests bilaterally and no atrophy or hypertrophy. Dr. Wiedrich stated, "The only objective finding that [appellant] currently has is a positive Phalen's test on the left wrist." He noted that she had pain in her palm that did not substantially limit her activities. Dr. Wiedrich listed work restrictions.

On June 23, 2005 appellant filed a claim for a schedule award. The Office requested that she submit an evaluation from her attending physician addressing the extent of any permanent impairment in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*). Appellant submitted a report dated June 5, 2006 from Dr. Manmohan Singh, a Board-certified orthopedic surgeon, who found that she had a five percent upper extremity impairment due to decreased strength and a five percent upper extremity impairment due to sensory deficit. Dr. Singh opined that appellant reached maximum medical improvement on June 5, 2006. He noted that she "appears to have symptoms of peripheral neuropathy due to chemotherapy for breast cancer." Dr. Singh related that he could not determine appellant's impairment due to this problem and recommended an evaluation by a neurologist.

On September 4, 2006 an Office medical adviser reviewed the medical evidence and noted that the only objective indication of carpal tunnel syndrome was Dr. Wiedrich's finding of a positive Phalen's test on the left side. Applying the second scenario for evaluating carpal tunnel syndrome on page 495 of the A.M.A., *Guides*, he found that appellant had a five percent permanent impairment of the left upper extremity and no impairment of the right upper extremity. The Office medical adviser opined that appellant reached maximum medical improvement six months post surgery, October 15, 2004 on the left side and January 14, 2005 on the right side.

By decision dated September 25, 2006, the Office granted appellant a schedule award for a five percent left upper extremity impairment. The period of the award ran for 15.6 weeks from October 18, 2004 to February 4, 2005.

¹ By decision dated August 23, 2005, the Office reduced appellant's compensation to zero based on its finding that her actual earnings as a modified bulk mail technician effective May 25, 2005 fairly and reasonably represented her wage-earning capacity.

LEGAL PRECEDENT -- ISSUES 1 & 2

The schedule award provision of the Federal Employees' Compensation Act² and its implementing federal regulations³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law for all claimants, the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) as the uniform standard applicable to all claimants.⁴ Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.⁵

Regarding carpal tunnel syndrome, the A.M.A., *Guides* provide:

“If, after an optimal recovery time, following surgical decompression, an individual continues to complain of pain, paresthesia and/or difficulties in performing certain activities, three possible scenarios can be present --

(1) Positive clinical findings of median nerve dysfunction and electrical conduction delay(s): the impairment due to residual CTS [carpal tunnel syndrome] is rated according to the sensory and/or motor deficits as described earlier.

(2) Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal EMG [electromyogram] testing of the thenar muscles: a residual CTS is still present and an impairment rating not to exceed five percent of the upper extremity may be justified.

(3) Normal sensibility (two-point discrimination and Semmes-Weinstein monofilament testing), opposition strength and nerve conduction studies: there is no objective basis for an impairment rating.”⁶

ANALYSIS -- ISSUES 1 & 2

The Office accepted appellant's claim for bilateral carpal tunnel syndrome. She underwent a right carpal tunnel release on April 15, 2004 and a left carpal tunnel release on July 14, 2004. Appellant returned to work with restrictions on October 18, 2004.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ 20 C.F.R. § 10.404(a).

⁵ Federal (FECA) Procedure Manual, Part 3 --Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

⁶ A.M.A., *Guides* 495.

On April 29, 2005 Dr. Wiedrich found that appellant had no atrophy and full range of motion of both upper extremities. Appellant had normal two-point discrimination and negative Tinel's sign and median nerve compression tests bilaterally. Dr. Wiedrich determined that the only objective finding of carpal tunnel syndrome was a positive Phalen's test on the left side.

On June 23, 2005 appellant submitted a claim for a schedule award. In an impairment evaluation dated June 5, 2006, Dr. Singh concluded that she had a five percent upper extremity impairment due to loss of strength and a five percent upper extremity impairment due to sensory deficits. He further found that appellant may have an additional impairment due to peripheral neuropathy possibly related to chemotherapy. Dr. Singh did not provide the clinical findings upon which he based his impairment rating or reference the tables and pages of the A.M.A., *Guides*. He further did not specify whether his evaluation pertained to the right or left upper extremity. As Dr. Singh did not provide the sufficient clinical findings to evaluate appellant's upper extremity impairment, his opinion is of diminished probative value.⁷

The A.M.A., *Guides* provides a specific method for determining permanent impairment for carpal tunnel syndrome following surgical release. Page 495 of the A.M.A., *Guides* states that after an optimal recovery time following surgical decompression of carpal tunnel syndrome, three scenarios are possible: if positive clinical findings of median nerve dysfunction are present, the impairment is rated according to sensory or motor deficits; with normal sensibility and opposition strength or abnormal sensory or motor latencies or abnormal EMG testing, an impairment rating not to exceed five percent may be justified; finally, with normal sensibility, opposition strength and nerve conduction studies, there is no objective basis for an impairment rating.⁸

An Office medical adviser reviewed the evidence and noted that the only positive clinical findings showing residual carpal tunnel syndrome was a positive Phalen's test on the left side. He applied the second scenario on pages 495 of the A.M.A., *Guides*, which provides an impairment rating not to exceed five percent for residual carpal tunnel syndrome demonstrated by normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal EMG testing of the thenar muscles. The Office medical adviser's finding is not supported by any diagnostic studies obtained subsequent to appellant's carpal tunnel releases. He gave appellant the presumption of abnormal testing and determined that she had a five percent impairment of the left upper extremity. The Office medical adviser concluded that she had no impairment of the right upper extremity. The evidence in this case fails to establish that appellant has more than a five percent permanent impairment of the left upper extremity or a permanent impairment of the right upper extremity.

On appeal appellant contends that she is entitled to a schedule award for the right upper extremity based on Dr. Singh's report. As discussed above, however, Dr. Singh did not provide

⁷ Patricia J. Penney-Guzman, 55 ECAB 757 (2004).

⁸ See *supra* note 6.

any clinical findings upon which he based his rating or cite to the A.M.A., *Guides*, consequently, his report is of diminished probative value.⁹

CONCLUSION

The Board finds that appellant has not established that she has more than a five percent permanent impairment of the left upper extremity. It further finds that she has not established a permanent impairment of the right upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 25, 2006 is affirmed.

Issued: March 5, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁹ See Patricia J. Penney-Guzman, *supra* note 7.